
UTAH LABOR COMMISSION

TIFFANI J. LALOR,

Petitioner,

vs.

**HIGHLAND COVE RETIREMENT and
OLD REPUBLIC INSURANCE CO,**

Respondents

**ORDER DENYING REQUEST
FOR RECONSIDERATION**

Case No. 06-0431

Highland Cove Retirement and Old Republic Insurance Co.¹ ask the Utah Labor Commission to reconsider its prior decision regarding Tiffani J. Lalor's claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this matter pursuant to Utah Code Ann. §63-46b-13.

BACKGROUND AND ISSUES PRESENTED

The Commission's previous decision affirmed Judge Marlowe's entry of default against Highland and Old Republic, as well as Judge Marlowe's award of benefits to Ms. Lalor. Highland and Old Republic now ask the Commission to reconsider its conclusions that: 1) Gallagher Bassett is not a party to this proceeding; and 2) that only Judge Marlowe's decision denying relief from default is subject to Commission review.

DISCUSSION

As its first argument, Highland and Old Republic contend that Gallagher Bassett "was the proper agent for Old Republic under every known form of contract law." From this, the Commission understands Highland and Old Republic to be arguing that Gallagher Bassett, as Old Republic's agent, was entitled to notice of Ms. Lalor's claim. The Commission further understands Highland and Old Republic to be arguing that lack of notice to Gallagher Bassett should excuse Highland and Old Republic from their failure to respond to Ms. Lalor's claim.

The foregoing argument is significantly different from the prior arguments that have been submitted to the Commission. In previous submissions, it has not been asserted that Gallagher Bassett was Old Republic's agent. Instead, Gallagher Bassett has represented that it was liable for

¹ The Commission notes that Highland and Old Republic have inserted Gallagher Bassett's name as one of the respondents in this matter. The Commission has previously ruled that Gallagher Bassett is not a respondent, and this decision reaffirms that ruling. Consequently, the Commission does not consider Gallagher Bassett to be a party to this proceeding.

Ms. Lalor's workers' compensation benefits. Both Judge Marlowe and the Commission evaluated that assertion but concluded that Old Republic, rather than Gallagher Bassett, was the proper defendant to Ms. Lalor's claim. Even now, Gallagher Bassett has not submitted any documentation of the purported agency relationship between Gallagher Bassett and Old Republic. Furthermore, even if such an agency relationship did exist, neither Old Republic nor Gallagher Bassett has submitted anything to verify that they notified the Commission of the agency relationship. Under these circumstances, the Commission reaffirms its previous determination that Gallagher Bassett was not entitled to notice of Ms. Lalor's claim.

Highland and Old Republic's second argument is that the Commission should have considered the merits of Judge Marlowe's award of benefits to Ms. Lalor, in addition to considering the parties' default. In making this argument, Highland and Old Republic rely on subsection 63-46b-11-(3)(a) of the Utah Administrative Procedures Act, but the subsequent provisions of the statute are actually controlling in this case.

In summary, subsection 63-46b-11(3)(a) states that a defaulted party may seek relief from default, and from any order issued subsequent to the default. However, subsection 63-46b-11(3)(b) goes on to require that any request for relief from default and any subsequent order **shall** be made to the administrative law judge. Then, subsection 63-46b-11(3)(c) restricts the defaulted party's right to further agency review to "only . . . the decision of the presiding officer on the motion to set aside the default." In other words, defaulted parties can obtain agency review on the issue of default, but not on the merits of the administrative law judge's orders subsequent to the default.

Of course, if the Commission had concluded that Highland and Old Republic were entitled to relief from default, it would be necessary to remand this case to Judge Marlowe for a hearing on the merits and issuance of a new order that reflected the hearing record. In that situation, Judge Marlowe's existing order awarding benefits would be set aside. But the Commission has reached the contrary conclusion that Highland and Gallagher Bassett are not entitled to relief from default. That is the extent of the Commission's authority under § 63-46b-11(3)(c), and Judge Marlowe's subsequent order awarding benefits remains in effect.

ORDER

The Commission denies Highland and Old Republic's request for reconsideration and reaffirms its previous decision. It is so ordered.

Dated this 18th day of May, 2007.

Sherrie Hayashi
Utah Labor Commissioner